

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                         |   |                              |
|-------------------------|---|------------------------------|
| ABITSCH & ABITSCH, LLC, | ) | Case No. 12-1039 SC          |
|                         | ) |                              |
| Plaintiff,              | ) | ORDER ADOPTING REPORT AND    |
|                         | ) | RECOMMENDATION AND REMANDING |
|                         | ) | <u>CASE</u>                  |
| v.                      | ) |                              |
|                         | ) |                              |
| DARUKA WANIGATUNGA,     | ) |                              |
|                         | ) |                              |
| Defendant.              | ) |                              |
|                         | ) |                              |

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Now before the Court is a Report and Recommendation, recommending that this case be remanded to the Superior Court of the State of California, City and County of San Francisco. ECF No. 4. Having reviewed the Report and Recommendation, the Court finds it to be correct, well-reasoned, and thorough, and therefore ADOPTS it in every respect.

Defendant Daruka Wanigatunga ("Defendant") has removed this unlawful detainer action to federal court for the third time. ECF No. 1 ("Not. of Removal"). The Court previously remanded the case twice, rejecting Defendant's assertions that removal was proper because he planned to file a counterclaim against Plaintiff Abitsch & Abitsch LLC ("Plaintiff") based on the Federal Debt Collection Practices Act ("FDCPA"). See Case No. 11-4833 ECF No. 11 ("Oct. 7 2011 Remand Order"), Case No. 11-5319 ECF No. 10 ("Jan. 25 2012 Remand Order"). Now Defendant alleges that "[a]fter the matter was remanded Plaintiff finally produced documents and other things

1 requested well before the initial removal . . . [which] indicate  
2 that a federal question exists." Not. of Removal at 3. Defendant  
3 argues that removal is proper since he intends to use this new  
4 information to file a counterclaim against Plaintiff that raises a  
5 federal question. Id. at 4-5. This same argument has been  
6 addressed and rejected twice before. Now the Court rejects it for  
7 a third time. Accordingly, this case is REMANDED to the Superior  
8 Court of the State of California, City and County of San Francisco.  
9 The Court admonishes Defendant that future meritless removals will  
10 result in sanctions.

11  
12  
13 IT IS SO ORDERED.

14  
15 Dated: March 13, 2012



UNITED STATES DISTRICT JUDGE